IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 1744 of 1999

For Approval and Signature:

HON'BLE MR.JUSTICE H.K.RATHOD

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

PUSHPAVATI MANUBHAI DESAI

Versus

DAHOD ANAJ MAHAJAN KELAVANI SARVAJANIK EDUCATION SOCIETY

Appearance:

1. Special Civil Application No. 1744 of 1999

MR GI DESAI for Petitioner No. 1

RULE SERVED for Respondent No. 1-2

MR K.L.PANDYA, AGP for Respondent No. 3-5

CORAM : HON'BLE MR.JUSTICE H.K.RATHOD

Date of decision: 25/09/2003

ORAL JUDGEMENT

Heard learned advocate Mr. G.I.Desai appearing on behalf of petitioner. Though notice of rule has been

served to respondent Nos. 1 & 2 no appearance is filed on their behalf. Learned AGP Mr. K.L.Pandya appearing on behalf of respondent Nos. 3, 4 & 5.

2. The grievance of the petitioner is that one Marshiben against whom similar objection was raised by the Junior Assistant Examiner in the year 1976 as she was being BA with PTC and her case was allowed by the same Hon'ble Judge M.M.Dave who has refused the similar claim/relief of the petitioner. Therefore, according to the petitioner, she has made a representation to the school authority and requested to apply the decision of Marshiben given by the Tribunal and to grant the benefit accordingly. The said request has been rejected by the respondent No.1 & 2 by order dated 25.1.1994.

3. I have perused the order passed by the Tribunal passed in the case of Marshiben which is at page 37 (Annexure-C). The Secondary Education Tribunal, Ahmedabad has decided Application No. 5 of 1990 in case of Marshiben on 24.6.1991 having the similar situation as that of the present petitioner, wherein, following observation is relevant:

> "The Dept. objection does not seem to be reasonable or justified the relevant time P.T.C. was considered a training qualification. In the grant-in-aid code Rules 63.1 under the head trained teachers the training qualification of Senior Primary Teachers Training Certificate is clubbed with the S.T.C. Certificate. Therefore, the applicant should be considered a trained graduate with her qualification of B.A. P.T.C. especially as and when she has been given to the B.A.S.T.C. pay scale in Sarela pay scale, there is no reason why she should be denied the Desai pay scale when the Desai pay scale have been created w.e.f. 1.1.1979. Therefore, the applicant should have been given the difference of arrears in salaries for the period between 1.1.1973 and 31.5.1977 on the fixation of the applicant's salaries in the pay scale of Rs.440-640 during this period of course, the applicant has approaches this Tribunal after a long time but when the question is so clear and the department's withholding of the arrears of difference in salaries cannot be justified, the applicant should be given the arrears of difference in salaries."

4. Ultimately the Tribunal has allowed the

application of Marshiben while declaring that Marshiben is entitled to the arrears of difference in salary for the period 1.1.1973 and 31.5.1977 on the basis of her fixation of pay in pay scale of Rs. 440-640 w.e.f. 1.1.1973. The Opponent school was directed to assess the supplementary bill for the arrears of difference in salary. The supplementary bill was directed to be sent to the department and the department was directed to sanction the bill and make payment to the applicant for the arrears of difference in salaries within a period a period of Opponent School. The Opponent school was also directed to submit the supplementary bill within a period of one month from the date of the order.

5. In light of the above observations and directions, the petitioner was appointed as Assistant Teacher on 15.6.1964 and placed in graduate trained teachers scale and was confirmed on 15.6.1964. On introduction of Sarela Pay Commission, the petitioner was placed in graduate trained teacher scale Rs.225-365. The school was composite school, comprising Standard V to XI but according to the new policy of Government, Standard V to VII is Primary school and standard VIII to XI is Secondary school. The petitioner was a protected teacher in which pay and pay scale was protected as per Government Resolution dated 29.11.1965. The school was inspected by District Education Officer, Godhra and there was no objection regarding pay and pay scale up to 1976. In the year 1976 Junior Assistant Examiner has raised the objection regarding pay scale of the petitioner which was reduced and she was placed in the SSC trained scale after 11 years. Against that, a representation has been made giving example of similarly situated person by the petitioner whose case was considered by the department and who was continued in the graduate trained teacher scale. According to the petitioner, her efforts have not been finalised in her favour. Thereafter petitioner had approached the Tribunal by Application No. 297 of 1983 whereby the Tribunal has observed with a direction to the Director of Education that it is a fit case to consider by the department with observation and if the present petitioner is agreed with the said decision then liberty be given to the petitioner to approach again to the Tribunal. Accordingly petitioner was again approached to the Tribunal by Application No. 39 of 1985 but it was partly allowed and claim of trained graduate scale i.e. Rs.440-640 was rejected but no recovery was made and issued direction to pay the scale of graduate trained teacher from 15.6.1976 on the basis of her improved qualification i.e. B.Ed.

6. Considering the above facts and observations made by the Tribunal at page 31 in the decision of Marshiben having almost similar situation as that of the present petitioner, and considering the grant-in-aid Code Rule 63(1) the Tribunal has granted the scale Rs.440-640 to Marshiben during the period of course. Therefore, according to my opinion, in light of these facts between the parties and considering the decision given by the Tribunal in case of Marshiben, if this question or grievance of the petitioner examined by the District Education Officer, Panchmahals at Godhra then it will meet the ends of justice. Therefore, the decision taken by the respondent school authority dated 25.1.1994 and also the order passed by the Tribunal in Application No. 354 of 1994 dated 7.12.1998 are hereby quashed and set aside with a direction to the District Education Officer Panchmahals at Godhra to consider the case of the petitioner in light of the observations made by the Tribunal in case of Marshiben in Application No. 5 of 1990 dated 24.6.1991 and pass reasoned order in accordance with law within a period of two months from the date of receiving the copy of this order. Rule is made absolute. No order as to costs.

(H.K.Rathod,J)

Jayanti*